



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Capreit LP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to the landlord's application for an Order of Possession for unpaid rent; for a Monetary Order for unpaid rent; for an Order permitting the landlord to keep all or part of the tenants security deposit; and to recover the filing fee from the tenant for the cost of this application.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other and witness on their evidence. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession due to unpaid rent?
- Is the landlord entitled to a monetary Order to recover unpaid rent?
- Is the landlord entitled to keep all or part of the security deposit?

Background and Evidence

This tenancy started as a fixed term for one year on September 15, 2010 reverting to a month to month tenancy at the end of the fixed term. Rent for this unit is \$1,225.00 per month and is due on the first of each month. The tenant paid a security deposit of \$612.50 on September 15, 2010.

The landlord testifies that the tenant has been repeatedly late paying rent and the tenant was served with four other 10 Day Notices to End Tenancy in January, February, March and April, 2013. The landlord testifies that the tenant failed to pay rent for May, 2013 and another 10 Day Notice was issued on May 02, 2013. This was served in person to the tenant's husband on May 02, 2013. This Notice states that the tenant had five days to either pay the outstanding rent, apply for Dispute Resolution or the tenancy would end on May 15, 2013. The tenant did not pay the outstanding rent or dispute the Notice within five days. However the tenant did make a payment of \$1,225.00 on May 10, 2013 and the landlord accepted this rent and marked the receipt for use and occupancy only.

The landlord had applied to retain the tenant's security deposit in partial payment towards the rent arrears. The landlord has applied for an Order of Possession to take effect on June 15, 2013.

The tenant testifies that the initial agreement was for rent to be paid on the first day of each month however the tenant spoke to a manager for the landlord in August 2012 and had a verbal arrangement to pay rent on the 10th day of each month. The tenant testifies that she did not realize how serious this was and asks the landlord to extend any eviction until the end of September, 2013.

The landlord testifies that based on the tenants past history of late rent payments the tenant has failed to fulfill her obligations to pay rent on the first day of each month. Any

curtesy extended in the past to help the tenant cannot keep being extended and was not an agreement for the tenant to pay on the 10th of every month.

Analysis

Section 26 of the Act states:

A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I have reviewed all documentary evidence and accept that the tenant has been served with Notice to End Tenancy pursuant to section 88 of the *Residential Tenancy Act*. The Notice is deemed to have been received by the tenant on May 02, 2013. The Notice states that the tenant has five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not pay the outstanding rent within five days nor apply to dispute the Notice to End Tenancy within five days.

Based on the foregoing, I find that the tenant is conclusively presumed, under section 46(5) of the *Act*, to have accepted that the tenancy ended on the effective date of the Notice and grant the landlord an order of possession pursuant to section 55 of the *Act*. I am satisfied with the undisputed evidence before me that the tenant had failed to pay rent for May, 2013 on the day it was due under the tenancy agreement or within the five allowable days granted after a 10 Day Notice is served upon the tenant. As no rent is due for May, 2013 at this time I dismiss the landlord's application for a Monetary Order for unpaid rent for May, 2013.

As the landlord has been successful in this matter, the landlord is also entitled to recover the **\$50.00** filing fee for this proceeding pursuant to s. 72(1) of the *Act*.

I find that the landlord is entitled to be reimbursed for the \$50.00 cost of filing this application. I order that the landlord retain this amount from the security deposit and

interest of \$612.50 leaving a balance \$562.50 which must be returned to the tenant or otherwise dealt with in compliance with section 38 of the *Act*.

Conclusion

I HEREBY ISSUE an Order of Possession in favour of the landlords effective **on June 15, 2013**. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: June 06, 2013

Residential Tenancy Branch

